

JS-6

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

GREGORY FRANKLIN,
Plaintiff,
v.
A. VILLANUEVA, et al.,
Defendant.

Case No. CV 22-5837 CBM (MRW)

**ORDER DISMISSING ACTION
WITHOUT LEAVE TO AMEND**

FRCP 41

The Court dismisses this action without leave to amend for failure to state a claim upon which relief may be granted.

* * *

1. This is a pro se prisoner civil rights action. Plaintiff is an inmate at the state prison in Lancaster. Over the years, he has attempted to litigate numerous of federal civil actions against the staff of the Lancaster prison.

26 2. The gist of Plaintiff's original complaint in this action
27 (CV 22-5837) is that, while temporarily housed at the Men's Central Jail
28 (MCJ) in Los Angeles in 2022, this Court dismissed one of his Lancaster-

1 related civil cases. Plaintiff alleges that the staff at the MCJ illegally
2 denied him access to a law library, which he contends led to the dismissal
3 of the earlier action. In other words, in the current 22-5837 action,
4 Plaintiff wishes to sue the MCJ guards for allegedly causing the dismissal
5 of a lawsuit involving Lancaster prison guards.

6 3. Pursuant to 28 U.S.C. §§ 1915(e) and 1915A, Magistrate
7 Judge Wilner screened the original complaint in this action. (Docket # 7.)
8 Judge Wilner concluded that Plaintiff failed to state a plausible cause of
9 action against any of the defendants. The magistrate judge noted that
10 Plaintiff's complaint specifically identified the dismissed Lancaster case as
11 Franklin v. Moore, No. CV 21-3551 CBM (KK) (C.D. Cal.). However, the
12 docket for the 21-3551 action revealed that the case was dismissed on the
13 merits of Plaintiff's amended complaint, not based on any alleged
14 interference from the jail. (Docket # 7 at 2-3.) As such, the Court
15 concluded that Plaintiff failed to plausibly plead injury in the derivative
16 21-5837 action.

17 4. The screening order gave Plaintiff leave to amend his
18 complaint. Plaintiff subsequently filed his First Amended Complaint.
19 (Docket # 10.) The FAC acknowledged that Plaintiff erred in claiming that
20 the 21-3551 action had been dismissed due to misconduct by MCJ staff.
21 Instead, in his amended complaint, Plaintiff claimed that another of his
22 Lancaster-based cases - Franklin v. Franklin, No. CV 21-3577 CBM (KK)
23 (C.D. Cal.) – was dismissed because of interference by LA jail officials.

24 5. Judge Wilner again dismissed the action at the screening
25 stage. (Docket # 11.) Judge Wilner reviewed the district court docket in
26 the 21-3577 action. The previous magistrate judge in that case had
27 extended Plaintiff's filing deadlines several times at Plaintiff's request.
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1 However, when Plaintiff returned to the Lancaster prison in late 2022, he
2 failed to properly update his mailing address as required under Local
3 Rule 41-6. As a result, court orders (mailed to Plaintiff's last known
4 residence at the MCJ) were returned as undeliverable. (Docket # 11.)

5 6. The basis for the district court's termination of the 21-3577
6 action, therefore, was Plaintiff's failure to comply with the pro se address
7 requirement, not any lack of law library access attributable to the
8 Los Angeles jail guards. The assigned district judge confirmed that ruling
9 by denying Plaintiff's request for relief under Rule 60 in that case. (No.
10 CV 21-3577, Docket # 27.)

11 7. Plaintiff filed a Second Amended Complaint in the current
12 22-5837 case. (Docket # 12.) The SAC essentially restates the allegations
13 from the FAC regarding the timing of the dismissal of the 21-3577 case.
14 Of note, Plaintiff additionally claimed that, when he was transferred back
15 from MCJ to the Lancaster facility in October 2021, he filed a "notification
16 of change of address" with this Court. (Docket # 12 at 8.)

17 8. A close review of the document to which Plaintiff referred
18 (Id. at 49) reveals that it is a change of address form that Plaintiff sent to
19 the wrong court (California Court of Appeal) in an unrelated action (a state
20 court case involving the Superior Court). No evidence – be it on the federal
21 court docket or in the materials Plaintiff submitted with the three
22 iterations of his current complaint – supports his contention that he
23 properly informed this Court of his move to Lancaster in 2021.

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25 9. A complaint may be dismissed for failure to state a claim based
26 on the lack of a cognizable legal theory or the absence of facts alleged under
27 such a theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th
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1 Cir. 1990); 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1). A complaint must
2 contain enough facts to establish a “plausible” entitlement to relief that is
3 more than merely speculative. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

4 10. Dismissal of the current action is appropriate. The Court
5 terminated Plaintiff’s earlier civil action (CV 21-3577) because of Plaintiff’s
6 failure to maintain a current address with the Court. It is implausible for
7 him to now maintain a lawsuit against guards at MCJ for allegedly causing
8 the termination of that case. As the Court conclusively determined, his
9 own inaction led to that dismissal.¹ Plaintiff has failed to plead any facts
10 that could lead to relief against the MCJ guards. Iqbal, 556 U.S. at 678.

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12 11. A pro se litigant is ordinarily entitled to amend a defective
13 complaint in an effort to state a proper claim for relief. Lopez v. Smith, 203
14 F.3d 1122 (9th Cir. 2000). However, this rule does not apply when “the
15 basic facts are alleged and have been analyzed” from a litigant’s pleadings
16 and it is apparent that that Plaintiff “cannot cure the flaws” in his claims.
17 Lipton v. Pathogenesis Corp., 284 F.3d 1027, 1039 (9th Cir. 2002).

18 12. Plaintiff has had three opportunities to state a viable claim in
19 the current action. This Court’s familiarity with the basis for its rulings in
20 the earlier c action preclude the possibility that Plaintiff could plead a
21 legitimate cause of action for relief. Dismissal without leave to amend is
22 appropriate. Lipton, 284 F.3d at 1039.

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27 1 Plaintiff makes no allegation in the SAC that MCJ guards prevented
28 him from mailing a change of address form to the Court. Indeed, by his own
submission (Docket # 12 at 49), he was able to do so. He simply failed to send one
to this Court.

13. Therefore, the present action is hereby DISMISSED without leave to amend.

IT IS SO ORDERED

Dated: MARCH 14, 2023

John P. Martin

**HON. CONSUELO B. MARSHALL
SENIOR U.S. DISTRICT JUDGE**

Presented by:



HON. MICHAEL R. WILNER
UNITED STATES MAGISTRATE JUDGE